



Report to the Auburn City Council

Action Item

Agenda Item No. **8**

City Manager Approval

To: Mayor and City Council Members

From: Bernie Schroeder, Director of Public Works *BS*

By: Carie Huff, P.E., Associate Civil Engineer *CH*

Date: January 9, 2012

Subject: Phase II Stormwater Permit update

The Issue

Informational item only.

Conclusion and Recommendation

No action to be taken.

Background

In July of 2011, City of Auburn staff brought an informational item regarding the Phase II Stormwater Permit. Since that time, there have been multiple developments regarding the permit legislation.

As discussed in July, the existing General Permit (Water Quality Order 2003-0005-DWQ) was adopted by the State Water Resources Control Board (SWRCB) in April 2003 for a 5-year permit term. The existing General Permit expired in May 2008; however, it continues in force and in effect until a new General Permit is issued or the State Water Board rescinds it.

In June 2011, the State Water Resources Control Board issued a Notice of Opportunity for Public Comment (Notice) pertaining to the Draft National Pollutant Discharge and Elimination (NPDES) General Permit and Water Discharge Requirements for Storm Water Dischargers from Small Municipal Separate Storm Sewer Systems, hereafter referred to as the draft permit.

Review of the permit brought forth multiple concerns which will have a significant impact upon the City's resources and operations in order to comply. The draft permit includes the following items:

1. Public Outreach – Education strategy with Community Based Social Marketing (General Public, Commercial/Industrial and Construction (one acre or less)) and two community surveys each year.
2. Public Involvement – Citizen's advisory group.
3. Illicit Discharge Detection and Elimination – spill response plan and field screening and Analytical Monitoring (in "priority areas" – number of areas undetermined).
4. Post Construction – extensive studies and reporting requirements.
5. Construction – Construction site inventory with database software required. Construction plan review and approval procedures which now requires staff to quantify soil loss for justification of Best Management Practices (BMPs). Construction site inspection and enforcement which defines when actual stormwater inspections must be performed without consideration of workload or staffing. Permittee staff training which mandates staff training, testing and certifications equating to \$750 per person. Requires City to report on behavioral changes in attendees. Construction site operator

- education which makes the City responsible for distribution of educational materials to contractors/developers.
6. Municipal Operations – Inventory and assess all City owned facilities and identify “hot spots.” Develop Storm Water Pollution Prevention Plans (SWPPPs) for all “hot spots.” Weekly, quarterly, and annual inspections. Extensive storm drain system maintenance provisions. Requires a maintenance schedule (assess and prioritize all catch basins 20% must be “high priority”), inspect all “high priority catch basins once per year, clean all catch basins within one week if it is more than 1/3 full, visually monitor surface drainage structures one time per year, assess all City O&M activities). Incorporate water quality and habitat enhancement features in existing flood management facilities (assess at least two structures per year, implement changes or additions to two flood management projects per year to enhance water quality and habitat functions unless analysis shows infeasibility of changes). Pesticide, herbicide and fertilizer management. Annual employee or O&M vendor training with assessment of knowledge.
 7. Program Management – Revised ordinance to comply with draft permit, including requiring commercial and industrial facilities to install BMPs. Must ensure adequate resources (staff and money). Fiscal and staffing level reporting – three years at a time (annual fiscal analysis (capital and O&M), source of funding, certification that the City will comply, enforcement response plan, refer non-filers to Regional Board, tracking system, recidivism reduction (incentives and disincentives).
 8. Trash Reduction Program – Adopt trash reduction ordinance. Retrofit sites with trash capture structural controls (20% of commercial/retail/wholesale zoned areas).
 9. Industrial/Commercial Facility Runoff Control Program – Inventory and prioritize thirty seven categories of commercial and industrial facilities. Update annually. Database of information on sites. Retroactively require sites to implement BMPs. Facility inspections. Inspector training.
 10. Receiving Water Monitoring – Rotate monitoring annually among the watersheds. Chemical and Physical Constituents (DO, temperature, conductivity, pH) require continuous monitoring over specified time frames. Other parameters listed: pathogens, nutrients, bioassessments required, criteria of alteration status not clearly defined.
 11. Program Effectiveness Assessment and Improvement – Develop plan. Plan must respond to specific management questions. Quantitative and science based estimates of pollutant load removals of BMPs. Quantitative measurement of behavior changes. Visual comparisons. Water quality monitoring data. Best management practice condition assessments. Inventory, map and assess maintenance condition of urban BMPs (Lake Tahoe BMP Rapid Assessment Methodology). Field observations required. Long term maintenance plans. Municipal Watershed Pollutant Load Quantification (annually). Eleven specified constituents listed. Program modifications.
 12. Total Maximum Daily Load (TMDL) Compliance Requirements – TMDL implementation (BMPs, effectiveness assessment, monitoring). Must submit a Management Plan if not meeting a wasteload allocation.

In response to the concerns and financial implications of the draft permit, City of Auburn staff prepared letters, along with other jurisdictions and stormwater groups, for submittal to the Chair of the SWRCB requesting a sixty day review extension. The SWRCB did grant an extension, although only for thirty days (the original review period that ended on August 8th was moved to September 8th). City staff participated in the public comment period via additional letters to the SWRCB on an individual basis presenting the financial implications of the permit along with the Placer Regional Stormwater Group and the Statewide Stormwater Coalition. Since the completion of the comment period, the SWRCB has indicated that they are re-writing the draft permit and will release it again in the beginning of 2012. The SWRCB will again accept comments from interested parties on the re-release of the draft permit.

Although the SWRCB was not initially receptive to the fiscal issues facing those responsible with implementation of the permit, the Board has indicated that compromise is warranted. The hope is that the Board recognizes the hardship it places on local jurisdictions in terms of limited resources and the subsequent impact on the business climate in California.

Throughout the review of the draft permit, several concerns have been voiced regarding the permit process which have become a priority of the coalition to address. Items include:

1. Cost effectiveness – to establish a robust and credible analytical process to fully assess costs of SWRCB actions, including permits as part of the formal deliberation process.
2. Better stakeholder processes – to establish more comprehensive stakeholder processes that allow for adequate time and allow all affected stakeholders to participate in permit policy development.
3. Sound science – to ensure that SWRCB permits are scientifically sound and achieve the best water quality benefit relative to scarce public resources.
4. Sound analysis – to ensure that SWRCB permits are promulgated on sound analysis and a clear need.
5. Local control – to ensure that future SWRCB stormwater permits provide local governments with enough flexibility to determine how to best meet the State's water quality objectives.

In other stormwater news:

- A superior court judge has invalidated the Numeric Effluent Limits (NELs) contained in the Construction General Permit for stormwater runoff issued by the SWRCB. The Court found that the NELs were subject only to balancing factors under federal law not state law and that the SWRCB is required to comply with the cost-benefit factors set forth in the federal Clean Water Act in establishing NELs. The Court concluded that the NELs are invalid and unenforceable unless and until the SWRCB can produce the data that demonstrates that available technologies will actually achieve the NELs.
- The State Water Resources Control Board has indicated that they will remove the Numeric Effluent Limits (NELs) in the draft Industrial Permit. Because of this decision, it is anticipated that the numeric limits will also be removed from the draft Phase II Stormwater permit.

Staff will continue to update Council on the draft permit reissuance and our efforts to impact the outcome of the final permit.

Alternatives Available to Council; Implications of Alternatives

Not applicable.

Fiscal Impact

Not applicable.

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